

**United States Bankruptcy Court
Central District of California
Riverside
Magdalena Reyes Bordeaux, Presiding
Courtroom 303 Calendar**

Wednesday, September 6, 2023

Hearing Room 303

4:00 PM

6: -

Chapter

#0.00 Judge Reyes Bordeaux will hold hearings in person and remotely via Zoom.gov.

In person Appearance Policies

Parties may appear in person for hearings at United States Bankruptcy Court located at 3420 Twelfth Street, Riverside, CA 92501 in Courtroom 303. Parties appearing in person must wear face masks, practice social distancing, and comply with all applicable guidelines of the United States Bankruptcy Court, Central District of California, and any additional requirements required under California State Law at the time of the hearing. Please note that Judge Reyes Bordeaux will not be wearing a mask.

Remote Appearance Policies

Parties may also appear remotely for hearings using ZoomGov, which permits parties to appear by video or by telephone. Hearing participants and members of the public may use ZoomGov free of charge to connect to hearings before Judge Reyes Bordeaux. Video and audio connection information for hearing(s) on this calendar is listed below.

Individuals may use a personal computer (equipped with camera, microphone and speaker), or a mobile device (such as an iPhone) to appear by ZoomGov video and ZoomGov audio. Individuals may also use a telephone to appear by ZoomGov audio only (standard telephone charges may apply). A Zoom or ZoomGov account is not necessary to connect to the hearings and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

A Zoom or ZoomGov account is not necessary to participate in the hearings and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and will constitutes its official record.

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Video/audio web address: <https://cacb.zoomgov.com/j/1605518548>

ZoomGov Meeting ID Number: 160 551 8548

Meeting Passcode: 3032023

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Docket 0

Tentative Ruling:

- NONE LISTED -

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#1.00 CONT Order Setting Hearing Re Motion For Reconsideration Of Order

Advanced From: 10/17/23, 9/7/23

EH__

Docket 59

Tentative Ruling:

9/6/2023

The Court's tentative is to deny Mr. Negrette's Motion for Reconsideration for the reasons as set forth below.

Moreover, Mr. Negrette's request for a stay pending appeal is moot as the motion for a stay pending appeal filed as Dkt. 58 has been granted. *See* Dkts. 58 and 70.

Appearances are REQUIRED. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

PROCEDURAL BACKGROUND

On December 7, 2022, Phu Van Pham ("Debtor" or "Mr. Pham") filed a voluntary Chapter 7 petition. On January 30, 2023, the case was dismissed for failure to file required case commencement documents. *See* Dkt. 14.

Office of the United States Trustee Motion for Violation of 11 U.S.C. § 110

On May 4, 2023, the Office of the United States Trustee ("UST") filed a motion ("UST Motion") asserting that Ricky Rene Negrette ("Mr. Negrette") was a bankruptcy petition preparer ("BPP"), who committed numerous violations of § 110. The UST's Motion set forth that Mr. Negrette's violations of Section 110 included the following:

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- (1) failing to identify himself or the services he provided in the Petition, Schedules, and Statement of Financial Affairs as required under Section 110(a)(2);
 - (2) failing to provide his identifying number on a document prepared by a bankruptcy petition preparer as required under Sections 110(c)(1) & 110(c)(2);
 - (3) using the word "legal" in his advertisement and email correspondence in violation of Section 110(f); and
 - (4) collecting the court filing fee from Debtor in violation of Section 110 (g)
- (1).

To support the UST Motion, the UST also provided a declaration from Mr. Pham, whose primary language is Vietnamese, and Mary Avalos, a paralegal specialist of the UST's office. Mr. Pham's declaration stated that ***Mr. Negrette told him to say that no one helped him with his bankruptcy paperwork.***¹ On such basis, the UST sought for an order requiring Mr. Negrette to pay fines, pay damages, and forfeit fees for the multiple violations of § 110 as follows:

- (1) disgorgement of \$900 fee paid by Mr. Pham to Mr. Negrette, payable to Mr. Pham;
- (2) statutory damages of \$2,000, payable to Mr. Pham; and
- (3) statutory fines of \$12,000, payable to the UST.

Mr. Negrette's Response to the UST Motion

On July 7, 2023, Mr. Negrette filed a response to the UST Motion and his own declaration in support of his response. Dkt. 44. In the response, Mr. Negrette admitted that he typed out the bankruptcy petition for Debtor but argued that he never held himself out as a BPP, and thus did not sign off as a BPP in the petition documents.

UST Reply in Support of the UST Motion

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On July 12, 2023, the UST filed a reply to Mr. Negrette's response and contended that Mr. Negrette in the response admitted that (1) he prepared bankruptcy documents for compensation but did not disclose his identify the bankruptcy petition documents, (2) he took possession of the filing fee from the Debtor and filed the case, and (3) he advertised his services as "1-2-1 Legal Solutions." *See* Dkt. 46.

Hearing and Order on UST Motion

On July 25, 2023, the Court held a hearing on the UST Motion and posted a tentative ruling ("7/25/23 Tentative Ruling") granting the UST Motion. At the hearing, Mr. Negrette argued that his failure to disclose his identify was not out of malice and was a mere misunderstanding. Mr. Negrette also argued that he did not have the financial means to afford the fines of \$12,000 and contended that there were cases supporting that the Court had discretion to reduce the fines in consideration of his financial status. On August 9, 2023, the Court entered an order granting the UST Motion ("Order"). Dkt. 51.

The Motion for Reconsideration²

The same day, Mr. Negrette filed the instant Motion ("Motion") requesting the Court to reconsider the Order under Federal Rule of Civil Procedure 59(e) and 60(b). Dkt. 54. In the Motion, Mr. Negrette asserts that this was a one-time occurrence. Moreover, he contends that he is unable to pay the \$12,000 fine as he earns an average of \$300.00/week and is on public assistance and that this fine would financially devastate him. Mr. Negrette argues that the Court has discretion to limit or resolve the fines in consideration of his financial ability to pay the fines.

UST Opposition to the Motion for Reconsideration

On August 31, 2023, the UST filed an opposition ("Opposition") to the Motion. Dkt. 81. In the Opposition, the UST argues that Mr. Negrette raised largely the same arguments that he made at the hearing and does not identify any newly discovered evidence, nor any legal or factual errors in the Court's ruling. Further, the UST asserts that the Court is not obligated to reduce the penalties under Section 110 based on a BPP's inability to pay or on whether a BPP is a repeat violator of the statute. The UST

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also contends that the Court made specific findings that Mr. Negrette violated the statute and imposed the fines and penalties authorized by Section 110.

LEGAL ANALYSIS

Motion for Reconsideration

The Bankruptcy Rules and Civil Rules do not recognize a motion for reconsideration. *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 539 (B.A.P. 9th Cir. 2004). Instead, the rules allow a party to file either a motion to amend a judgment pursuant to Bankruptcy Rule 9023 or a motion for relief from judgment or order pursuant to Bankruptcy Rule 9024. *Id.* These rules respectively make Rules 59 and 60 applicable in bankruptcy cases.

Which rule applies depends on the time the motion is filed and served. *Id.* If a motion for reconsideration is filed within 28 days of the entry of judgment or order, the motion "is treated as a motion to alter or amend judgment under [Rule] 59(e)." *Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898 (9th Cir. 2001) (citing *United States v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)). Where the period for filing a motion under Rule 59 has expired, a motion for reconsideration may be construed as a motion for relief from an order or judgment under Rule 60(b), *Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001), but it must be made within a reasonable time – no more than one year after entry of the judgment or order. Fed. R. Civ. P. 60(c).

Here, Mr. Negrette filed the Motion within 28 days after the entry of the Order, so it will be construed as a request under Rule 59.

Federal Rule of Civil Procedure 59

Rule 59(a) provides the court may grant a new trial "for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court." Fed. R. Civ. P. 59(a)(1)(B). Under Rule 59, reconsideration is appropriate when:

- (1) the court is presented with newly discovered evidence;
- (2) the court committed clear error or the initial decision was manifestly unjust;

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or

(3) there is an intervening change in controlling law.

Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). The moving party has the burden to show he is entitled to relief under Rule 59. *See, e.g., Weinstein v. Lewis*, 34 F.3d 1075 (9th Cir. 1994) (citing *Cassidy v. Tenorio*, 856 F.2d 1412, 1415 (9th Cir. 1988)); *Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 282 F.R.D. 216, 220 (D. Ariz. 2012); *In re Tyrone F. Conner Corp.*, 140 B.R. 771, 784 (Bankr. E.D. Cal. 1992).

A party may not use a motion to reconsider as a vehicle "to present a new legal theory for the first time," "to raise legal arguments which could have been raised in connection with the original motion," or "***to rehash the same arguments presented the first time or simply express the opinion that the court was wrong.***" *Wall St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.)*, 344 B.R. 94, 103 (B.A.P. 9th Cir. 2006) (citing *In re Armstrong Store Fixtures Corp.*, 139 B.R. 347, 349-50 (Bankr. W.D. Pa. 1992)), *aff'd and remanded*, 2008 U.S. App. LEXIS 10320 (9th Cir., May 7, 2008). (emphasis added) "The ***standard for granting a motion to reconsider is strict*** in order to preclude repetitive arguments that have already been fully considered by the court." *Id.*(emphasis added)

Moreover, LBR 9013-4(a) sets forth grounds for a new hearing in contested matters or amendment of judgment pursuant to Bankruptcy Rule 9023, including reconsideration upon showing a "surprise that could not have been guarded against by the exercise of ordinary prudence." LBR 9013-4(a)(4).

Mr. Negrette does not present newly discovered evidence nor argue that there is an intervening change in controlling law

Here, Mr. Negrette does not appear to present any newly discovered evidence in the Motion; nor does he argue that there is an intervening change in controlling law. As such, the remaining inquiry under Rule 59(e) is whether the Court committed clear error or the initial decision was manifestly unjust.

Mr. Negrette asserts that the Court committed clear error and that the decision is manifestly unjust.

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Mr. Negrette contends that the Court committed clear error resulting in a decision that is manifestly unjust by failing to consider material facts presented to the Court. Motion, page 1, lines 20-24. Specifically, Mr. Negrette argues that the Court failed to consider his financial ability to pay the fines and asserts that this was his first-time violation of the statute before this Court.

The Court in its 7/25/23 Tentative Ruling and Order ruled that Mr. Negrette is required to:

- (1) pay \$2,000 in damages to Debtor under Section 110(i)³;
- (2) forfeit and return \$300 to Debtor under Section 110(h)⁴; and
- (3) pay a fine of \$12,000 to the UST under Section 110(l),⁵

It appears that Mr. Negrette in the Motion requests the Court to reconsider the \$12,000 fine imposed under Section 110(l) and contends that the Court committed clear error and/or that this ruling was manifestly unjust.

Fines Under 11 U.S.C. § 110(l)(1)

Under Section 110(l)(1), a court may fine a bankruptcy petition preparer in an amount not to exceed \$500.00 for each failure to comply with Sections 110(b) through (h). 11 U.S.C. § 110(l)(1). Upon finding that a BPP has engaged in conduct violative of the statute, bankruptcy courts have discretion to determine appropriate amount of fine per violation. *United States Tr. v. McIntire (In re Sanchez)*, 446 B.R. 531, 540 (Bankr. D.N.M. 2011).

Fines are Tripled Under 11 U.S.C. § 110(l)(2)

In addition, courts must triple the fine if the basis for the fine is that the BPP "prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer." 11 U.S.C. § 110(l)(2)(D). Under Section 110(l)(2)(D), the statute sets forth that "[t]he court **shall triple the amount of fine assessed** under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—prepared a document for filing in manner that failed to disclose the identity of the bankruptcy petition preparer.

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Analysis of Fines Under 11 U.S.C. 110(l)**

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It appears that it is not settled in the 9th Circuit as to what factors must be examined to determine appropriate amount of fine under Section 110(l)(1). Certain courts have examined the nature of the violations and whether the BPP had previously been before the court to answer for violations of § 110. *See In re Monson*, 522 B.R. 340, 354 (Bankr. D. Utah 2014) (the court imposed a fine of \$10 per violation of Section 110(b)(1) and (c)(1) because the **BPP dutifully disclosed his identity on certain other documents**).(emphasis added)

In addition, one court in case *U.S. Trustee v. Assaf (In re Briones–Coroy)*, 481 B.R. 685 (Bankr. D. Colo. 2012) found the guidance in the Tenth Circuit's decision in *White v. General Motors Corporation*, 908 F.2d 675 (10th Cir. 1990) and conducted a multi-factor examination. One factor to be considered was the "financial status of the wrongdoer." *U.S. Trustee v. Assaf (In re Briones–Coroy)*, 481 B.R. at 716-17; *see also White v. General Motors Corporation*, 908 F.2d at 684-85. However, the *Briones–Coroy* court also recognized that **White examined Rule 11 sanctions and was not directly on point**. *U.S. Trustee v. Assaf (In re Briones–Coroy)*, 481 B.R. 685, fn. 159. (emphasis added)

In light of the factors considered by the courts discussed above, this Court notes that there is not a list of factors that the Court is required to consider in determining the appropriate amount under 11 U.S.C. § 110(l). Instead, the Court can consider the totality of the circumstances and has broad discretion in weighing various factors.

Here, the Court in its 7/25/23 Tentative Ruling found that Mr. Negrette committed the following eight violations:

- (1) **three violations** of § 110(b)(1) for failing to sign the documents including (i) the Petition, (ii) the Schedules, and (iii) the Statement of Financial Affairs;
- (2) **three violations** of § 110(c)(1) for failing to report his Social Security Number in (i) the Petition, (ii) the Schedules, and (iii) the Statement of Financial Affairs;
- (3) **one violation** of § 110(g)(1) for collecting the filing fee; and
- (4) **one violation** of § 110(f) for advertising to the public using a prohibited term.

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Mr. Negrette argues that this was the first time he was brought to this Court for violation of Section 110. However, the Court finds that this factor does not bear much weight after assessing the totality of circumstances. Here, the UST asserted in its Motion and presented supporting evidence to the Court that Mr. Negrette advertised his services to the public as "1-2-1 Legal Solutions."⁶ Moreover, the address listed for 1-2-1 Legal Solutions is the same as the address listed for Mr. Negrette's personal residence.⁷ And, the email utilized by Mr. Negrette when Mr. Negrette communicated with Debtor appears is 121legalsolutions@gmail.com.⁸ Mr. Negrette also collected the court filing fee from Debtor. Notably, in the Motion, Mr. Negrette did not dispute the veracity of the information in any of the documents filed with this Court or in any of the testimony presented before the Court.

Furthermore, Mr. Negrette prepared Debtor's bankruptcy filing documents but did not disclose his identify in the filing documents. And Mr. Negrette does not dispute this information. Distinguishable from *Monson*, where the BPP dutifully disclosed his information in certain document but only omitted it in other documents, Mr. Negrette did not disclose his information in any of the filing documents. In fact, Mr. Negrette specifically instructed Debtor, whose primary language is Vietnamese, to say that no one helped him with his bankruptcy paperwork. The UST Motion, Debtor Decl., ¶7. Thus, the Court finds that \$500 fines for each violation to be appropriate.

Mr. Negrette also contends the Court failed to consider his inability to pay the fines of \$12,000 and asserts that he makes an average of \$300 per week. However, a Court has the discretion to consider different factors and is not required to consider Mr. Negrette's financial condition, especially in light of the number and nature of violations that occurred in this case.

Congress enacted Section 110 to "address the growing problem of bankruptcy petition preparers who abuse the system in the course of preparing documents for the debtors to file." *In re Haney*, 284 B.R. 841 (Bankr. N.D. Ohio 2002). Moreover, Section 110 sanctions were added to address noncompliance and to provide mechanisms for court oversight. *Id.* at 847 (citations omitted).

As set forth above, Mr. Negrette committed multiple violations under Section 110 and then advised a Debtor with limited English skills to cover up his conduct by instructing Debtor to say, "no one helped me with my bankruptcy paperwork."⁹ The Court finds that the imposition of fines is appropriate, and accordingly Mr. Negrette's

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Motion for Reconsideration is Denied.

CONCLUSION

Mr. Negrette's Motion for Reconsideration is Denied.

Endnotes

¹ See Declaration of Mr. Pham in support of the UST Motion, Dkt. 22, ¶ 7.

² In the Motion, Mr. Negrette also requests for stay of the Order pending the appeal. This request is moot because he filed a sperate motion for stay pending appeal on August 17, 2023 as Dkt. 58, and an order granting that motion for stay was entered on August 22, 2023 as Dkt. 70.

³ The sanction imposed under Section 110(i) is mandatory. Under Section 110(i), once the courts find that a BPP has violated § 110 or committed any fraudulent, unfair, or deceptive act, the courts are required to award actual damages and a statutory damage amount of \$2,000 or twice that amount paid by the debtor to the bankruptcy petition preparer, whichever is greater, to debtors.

⁴ The UST reduced the amount that would be forfeited and returned to Debtor to \$300.

⁵ Under § 110 (1)(2)(D), the Court **shall** triple the amount of a fine assessed under paragraph (1) in any case in which that court finds that the bankruptcy petition preparer prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer. (emphasis added)

⁶ A true and correct copy of a website page was presented as evidence to the Court. See Declaration of Mary Avalos in support of the UST Motion, Dkt. 23, Exhibit 3.

⁷ See *Id.*, Exhibits 3 & 4.

⁸ See *Id.*, Exhibit 2.

⁹ See Declaration of Mr. Pham in support of the UST Motion, Dkt. 22, ¶ 7.

Party Information

Debtor(s):

Phu Van Pham

Pro Se

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Trustee(s):

Robert Whitmore (TR)

Pro Se